

Joe H.

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE POTENTIAL :	FINDINGS, CONCLUSIONS
PATTERN OF VIOLATIONS, INCLUDING	AND ORDER
NOTICES OF VIOLATION N91-35-1-1,:	
N91-20-1-1, AND N91-26-7-2(#2),	
CO-OP MINING COMPANY, BEAR :	
CANYON MINE, ACT/015/025, EMERY	INFORMAL HEARING
COUNTY, UTAH :	CAUSE NO. ACT/015/025

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On July 8, 1992, the Division of Oil, Gas and Mining ("Division") held an informal hearing concerning the potential pattern of violations represented by the above-referenced Notices of Violation ("NOV"s). The informal hearing was held at the request of the operator/permittee Co-op Mining Company ("Co-op") and in accordance with Utah Admin. R645-400-332 and the Division policy ("Policy") entitled Procedure For Determination of Pattern Of Violations, Utah Code Ann. Section 40-10, as revised April 28, 1992. The purpose of the hearing is to provide an opportunity for Co-op to prove to the Division that the above-referenced NOV's were not caused by Co-op willfully or through unwarranted failure to comply. The following individuals attended the informal conference:

Presiding:	Dianne R. Nielson, Director Division of Oil, Gas and Mining
Petitioner:	Carl Kingston, Esq.
("Co-op")	Counsel for Co-op Mining Company
	Wendell Owen Resident Agent Co-op Mining Company

Divisions

EXHIBIT

#9

Eldon Kingston
Co-op Mining Company

Kimly Mangum
Mangum Engineering
Consultant to Co-op Mining Company

Division:

Lowell Braxton
Associate Director for Mining

Pamela Grubaugh-Littig
Permit Supervisor

Thomas A. Mitchell, Esq.
Assistant Attorney General
State of Utah
Counsel for the Division

Board:

Joe Helfrich
Assessment Officer

The Findings, Conclusions, and Order in this matter are based on information provided in connection with this informal hearing and information in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. NOVs N91-35-1-1, N91-20-1-1, and N91-26-7-2(#2) have been identified by the Division as constituting a potential pattern of violations, in accordance with Utah Admin. R645-400-332 and the Policy.
3. NOVs N91-35-1-1, N91-20-1-1, and N91-26-7-2(#2) have been determined to have occurred. The fact of violation was not appealed in N91-35-1-1 and N91-26-7-2(#2). The fact of violation was appealed in N91-20-1-1, the fact of violation was upheld in an informal conference, and the informal order was not appealed.

4. In its consideration of whether the violations were caused willfully or through unwarranted failure to comply, the Division also reviewed other violations at the Bear Canyon Mine, including N91-26-7-2(#1), N91-35-8-1, N90-35-1-1, N90-25-1-1, and N91-26-4-3(31).

5. N91-35-1-1 was issued on February 27, 1991, based on an inspection conducted on February 22, 1991, for failure to conduct mining and reclamation activities in accordance with the approved plan, failure to include a detailed description of each road constructed, used or maintained within the permit area, and failure to remove topsoil from the area to be disturbed, in violation of Utah Admin. R614(645)-301-534.100 through 130, R614(645)-301-527.100, R614(645)-301-527.200 through 210, 230, and 240, R614(645)-301-232.100, and Utah Code Ann. 40-10-18(j). The unauthorized construction consisted of a road which was bladed from the top of the upper road (near upper pad) to the coal shoot where a hoist was installed.

6. With respect to N91-35-1-1, Wendell Owen stated that he gave Co-op employee Kevin Peterson specific directions as to how the coal was to be removed from around the coal shoot. According to Mr. Owen, the violation occurred because the employee did not follow Mr. Owen's directions.

7. The final assessment of NOV N91-35-1-1 included the assignment of 23 points for negligence. On a scale of 0-30 points, the range of 16-30 negligence points represents a greater degree of fault.

8. NOV N91-20-1-1 was written on April 26, 1991, for failure to operate in accordance and compliance with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program, specifically for failure to submit all maps and information required by the Division Order issued November 27, 1990, items 8, 14, 17, and 18. Provisions violated were Utah Admin. R614(645)-300-143 and R614(645)-303-212. The determination of insufficiency of the maps which prompted the Division Order, was based on field inspections and review of plan maps and information. Because the violation was written for failure to comply with the Division order and by its nature did not require substantiation through a field inspection, an inspection was not conducted prior to issuance of the violation.

9. With respect to N91-20-1-1, Co-op believes that they attempted in good faith to redo the maps required in the Division Order. Co-op did not know that the Division would require new maps until the Division Order was written. Co-op anticipated that it would take 6-8 months to redo the maps. The Division originally required that the maps be submitted in 90 days. That deadline was extended to March 27, 1991, a period of approximately 4.5 months.

When the consultant who usually does Co-op's maps was unable to do the work, Co-op hired two other consulting groups to redo the maps. Co-op requested an additional extension, but the request was not timely made.

10. The final assessment of NOV N91-20-1-1 included the assignment of 20 points for negligence. On a scale of 0-30 points,

the range of 16-30 negligence points represents a greater degree of fault.

11. NOV N91-26-7-2(#2) was written on July 2, 1991, based on an inspection on July 1, 1991, for failure to obtain Division approval before enlarging the shop pad, in violation of Utah Admin. R614(645)-300-143.

12. With respect to N91-26-7-2(#2), Co-op stated that the objective was to clean out a pond. The material from the pond had previously been taken to another pad area. However, when the pond was enlarged, Co-op's plan did not designate where the material was to be taken. The material was used to enlarge a pad which had not been designated to receive the material. Wendell Owen was responsible for the work, but was not there when the work occurred.

13. The final assessment of NOV N91-26-7-2(#2) included the assignment of 25 points for negligence. On a scale of 0-30 points, the range of 16-30 negligence points represents a greater degree of fault.

CONCLUSIONS OF LAW

1. The occurrence of NOVs N91-35-1-1, N91-20-1-1, and N91-26-7-2(#2) constituted a potential pattern of three same or similar violations, as provided in Utah Admin. R645-400-332 and the Policy, thereby causing the opportunity for this informal hearing.

2. The presumption, in evaluating whether the

violations were caused by the permittee willfully or through unwarranted failure to comply, assumes that a person intends the probable and logical consequences of his actions. As provided in Utah Admin. R645-400-331, a finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. No evidence has been provided which rebuts this presumption.

3. The Director has reviewed the history of these three violations, N91-35-1-1, N91-20-1-1, and N91-26-7-2(#2), as required by Utah Admin. R645-400-332.300 and the Policy.

4. The violations in N91-35-1-1 and N91-26-7-2 were directly related to the willful and unwarranted failure of Co-op management to sufficiently supervise employees to ensure that the work was properly conducted in accordance with the approved plan. In both NOVs, the permittee was determined to have demonstrated greater than ordinary negligence.

5. NOV N91-20-1-1 was caused by Co-op's failure to meet a deadline for submission of maps and information. Failure of the permittee to diligently complete an abatement is not justification for extension of the abatement time, as delineated in Utah Admin. R645-400-324. However, there is reason to believe that the failure to timely abatement may have been caused by factors in addition to negligence or lack of diligence. In consideration of the work to be done and Co-op's efforts to complete that work, the nature of the response does not constitute a willful or unwarranted failure to comply.

6. The Director has considered the existence of a pattern of violations based on two or more Division inspections, as required by Utah Admin. R645-400-332.100 and the Policy.

7. NOVs N91-35-1-1 and N91-26-7-2(#2) constitute a pattern of violations caused by willful and unwarranted failure to comply, as defined by Utah Admin. R645-400-332.

ORDER

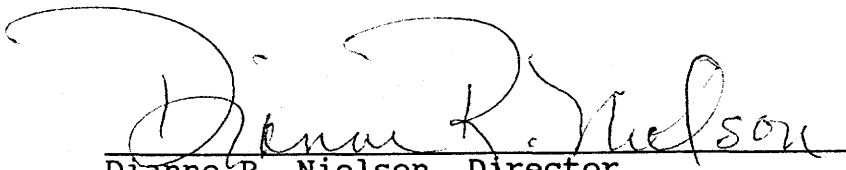
1. NOVs N91-35-1-1 and N91-26-7-2(#2) constitute a pattern of violations caused by willful failure to comply, as defined by Utah Admin. R645-400-332.100.

2. By this order, Co-op is notified of the Division's determination of a pattern of violations.

3. The Division hereby determines and recommends to the Board that an Order To Show Cause be issued pursuant to Utah Admin. R645-400-331, said Order To Show Cause to include a recommendation for a 48-hour suspension of mining operations.

4. Co-op has the right to an appeal of this Informal Order. That appeal is provided through the above-referenced Order to Show Cause. The Board will notify Co-op regarding the date of the formal hearing to consider the Order To Show Cause.

SO DETERMINED AND ORDERED this 27th day of July, 1992.


Dianne R. Nielson, Director
Division of Oil, Gas and Mining
State of Utah

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS, CONCLUSIONS AND ORDER for Cause No. ACT/015/025 to be mailed by certified mail, postage prepaid, the 28th day of July 1992, to the following:

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